

- SUBJECT:** Awarding costs and attorney's fees in cases concerning certain liens
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 8 ayes — Deshotel, Orr, Bohac, Garza, Giddings, S. Miller, Quintanilla, Workman
- 0 nays
- 1 absent — Solomons
- WITNESSES:** For — Matthew Moore, Associated Builders and Contractors of Texas; (*Registered, but did not testify:* Jon Fisher, Associated Builders and Contractors of Texas; Corbin Van Arsdale, AGC - Texas Building Branch; Michael White, Texas Construction Association)
- Against — (*Registered, but did not testify:* Barbara Douglas, Lumbermen's Association of Texas)
- BACKGROUND:** Current law allows a court to award costs and reasonable court fees in proceedings to foreclose a lien, enforce a claim against a bond, or declare a lien or claim wholly or partially invalid or unenforceable in cases dealing with mechanic's, contractor's, or subcontractor's liens.
- DIGEST:** HB 346 would require, rather than allow, a court to award costs and reasonable attorney's fees in any proceeding to foreclose a lien, enforce a claim against a bond, or declare that a lien or claim is wholly or partially invalid or unenforceable in cases dealing with mechanic's, contractor's, or subcontractor's liens.
- The bill would take effect September 1, 2011, and would apply only to proceedings begun on or after that date.
- SUPPORTERS SAY:** HB 346 would help ensure that contractors could recover the costs associated with lawsuits brought to obtain their due payment by requiring the court to award costs and attorney's fees based on the facts of the case and the reasonableness of the claim. The current system gives judges or juries the discretion to deny the recovery of attorney's fees if they choose,

putting too much risk on both the contractor trying to get paid and the owner trying to remove a claim when one or the other has been legitimately wronged.

The bill would help contractors working at small jobs to recover payment because they would not have to weigh the cost of going to court against the amount they were due. The attorney's fees and costs related to these lawsuits should not deter or be used as leverage against people with valid claims.

**OPPONENTS
SAY:**

HB 346 is unnecessary. Current law already permits a court or jury to award fees in cases dealing with mechanic's, contractor's, or subcontractor's liens. The current statutory language regarding these liens and claims is similar to the language in the Declaratory Judgments Act in the Civil Practice and Remedies Code, sec. 37.009, which permits the court to award costs and attorney's fees as are equitable and just in trials and appeals in civil court.

NOTES:

The companion bill, SB 539 by Carona, passed the Senate by 31-0 on the Local and Uncontested Calendar on March 17.